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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
v.  
  
JUAN ROCHA a.k.a. PABLO NUÑEZ,  
  
Defendant.

**Case No. CR 19-00382 EJD**

**DEFENDANT'S PROPOSED JURY  
INSTRUCTIONS**

Pretrial Conference: February 22, 2021  
Trial Date: March 9, 2021

**Honorable Edward J. Davila**

Defendant Juan Rocha a.k.a. Pablo Nuñez, by and through his counsel, submits the following proposed jury instructions. Pursuant to Federal Rule of Criminal Procedure 30, Mr. Rocha/Nuñez requests the Court to instruct the jury on the law as set forth below. Mr. Rocha/Nunez reserves the right to submit any limiting instructions, based upon the Court's evidentiary rulings at the pretrial conference or at trial.

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DEF'S PROPOSED JURY INSTRUCTIONS

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1 Mr. Rocha/Núñez also reserves the right to submit any additional proposed instructions,  
2 including his theory of the defense instructions, at the close of evidence.

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4 Respectfully submitted,

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6 Dated: February 19, 2021

STEVEN G. KALAR  
Federal Public Defender

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8 DEJAN M. GANTAR  
9 Assistant Federal Public Defender

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27 DEF'S PROPOSED JURY INSTRUCTIONS

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## INTRODUCTION

Mr. Rocha/Núñez requests that the indictment not be sent to the jury room. *See* Ninth Circuit Jury Procedure Manual, § 4.6 (“the Committee believes that great caution should be exercised in providing the jury with the indictment since it is frequently cast in highly prejudicial language.”) (“The trial judge has wide discretion as to whether the jury should be provided with a copy of the indictment for use during jury deliberations.”).

Mr. Rocha/Núñez requests the following preliminary Ninth Circuit Model Instructions (2010 edition):

- 1.1 Duty of Jury
- 1.3 What Is Evidence
- 1.4 What Is Not Evidence
- 2.11 Evidence for Limited Purpose
- 1.5 Direct and Circumstantial Evidence
- 1.6 Ruling on Objections
- 1.8 Conduct of the Jury
- 1.9 No Transcripts Available to Jury
- 1.10 Taking Notes
- 1.11 Outline of Trial
- 3.2 Charge Against Defendant Not Evidence – Presumption of Innocence – Burden of Proof (to be read after reading of indictment at beginning of trial, if indictment is read, and at the close of trial).

DEF’S PROPOSED JURY INSTRUCTIONS

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1 Mr. Rocha/Núñez requests the following Ninth Circuit Model Instructions during the  
2 trial:

- 3 2.1 Cautionary Instruction--First Recess
- 4 2.2 Bench Conferences and Recesses
- 5 2.3 Stipulated Testimony (if applicable)
- 6 2.4 Stipulations of Fact (if applicable)
- 7 2.5 Judicial Notice (if applicable)
- 8 2.11 Evidence for Limited Purpose

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10 Mr. Rocha/Núñez requests the following Ninth Circuit Model Instructions at the  
11 conclusion of the trial:

- 12 3.1 Duties of Jury to Find Facts and Follow Law
- 13 3.2 Charge Against Defendant Not Evidence--Presumption of Innocence--
- 14 Burden of Proof
- 15 3.6 What Is Evidence
- 16 3.7 What Is Not Evidence
- 17 3.8 Direct and Circumstantial Evidence
- 18 3.10 Activities Not Charged (if applicable)
- 19 4.1 Statements by Defendant (if applicable)
- 20 4.3 Other Crimes, Wrongs or Acts of Defendant (if applicable)
- 21 4.4 Character of Defendant (if applicable)
- 22 4.7 Character of Witness for Truthfulness (if applicable)
- 23 4.8 Impeachment Evidence - Witness (if applicable)
- 24 4.13 Missing Witness (if applicable)
- 25 4.14 Opinion Evidence, Expert Witness
- 26 7.1 Duty to Deliberate

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1           7.2    Consideration of Evidence - Conduct of the Jury

2           7.3    Use of Notes

3           7.6    Communication with Court. The defense objects to any *non-structural*  
4                   note sent by the jury being read to counsel during trial, before  
5                   deliberations. Specifically, the defense will object to any questions during  
6                   trial asking for factual clarification or further elaboration on any factual  
7                   issue. The defense has no objection to jury notes during the trial, and  
8                   before deliberations, relating to the structure of the trial and jury – such as  
9                   a sleeping juror, or attorney contact with a juror. The defense also has no  
10                  objection to counsel being made aware of jury notes *during deliberations*.

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12           In addition, Mr. Rocha/Núñez proposes additional instructions below and will propose  
13   his theory of defense instructions at the conclusion of evidence.

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27   DEF'S PROPOSED JURY INSTRUCTIONS

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**DEFENSE PROPOSED INSTRUCTION NO. 1**

(Preliminary instruction to be given to the entire panel before jury selection)

It is important that you discharge your duties without discrimination, meaning that bias regarding the race, color, religious beliefs, national origin, sexual orientation, gender identity, or gender of Mr. Rocha/Nuñez, any witnesses, and the lawyers should play no part in the exercise of your judgment throughout the trial.

Accordingly, during this voir dire and jury selection process, the lawyers and I may ask questions or use demonstrative aids related to the issues of bias and unconscious bias

*Given* \_\_\_\_

*Rejected* \_\_\_\_

*Given, As Modified* \_\_\_\_

DEF'S PROPOSED JURY INSTRUCTIONS

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**DEFENSE PROPOSED INSTRUCTION NO. 2****Duty Of Jury** (Preliminary instruction to be given before opening statements)

Jurors: You now are the jury in this case, and I want to take a few minutes to tell you something about your duties as jurors and to give you some preliminary instructions. At the end of the trial I will give you more detailed [written] instructions that will control your deliberations. When you deliberate, it will be your duty to weigh and to evaluate all the evidence received in the case and, in that process, to decide the facts. To the facts as you find them, you will apply the law as I give it to you, whether you agree with the law or not. You must decide the case solely on the evidence and the law before you and must not be influenced by any personal likes or dislikes, opinions, prejudices, sympathy, or biases, including unconscious bias. Unconscious biases are stereotypes, attitudes, or preferences that people may consciously reject but may be expressed without conscious awareness, control, or intention. Like conscious bias, unconscious bias, too, can affect how we evaluate information and make decisions.

In addition, please do not take anything I may say or do during the trial as indicating what I think of the evidence or what your verdict should be—that is entirely up to you.

NINTH CIRCUIT MODEL JURY INSTRUCTION 1.1 (2010) (Modified)

*Given* \_\_\_\_

*Rejected* \_\_\_\_

*Given, As Modified* \_\_\_\_

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**DEFENSE PROPOSED INSTRUCTION NO. 3**

**Initial Instruction**

This is a criminal case brought by the United States government. The government charges Mr. Rocha/Núñez with False Statement in Application for a Passport, in violation of 18 U.S.C. § 1542. The indictment is simply the description of the charge made by the government against Mr. Rocha/Núñez; it is not evidence of anything.

Mr. Rocha/Núñez has pleaded not guilty to the charge and is presumed innocent unless and until proved guilty beyond a reasonable doubt. Mr. Rocha/Núñez has the right to remain silent and never has to prove innocence or present any evidence. The government always carries the burden of proof beyond a reasonable doubt

In order to prove that Mr. Mr. Rocha/Núñez is guilty of these offenses, the government must prove each element of the offense beyond a reasonable doubt.

**NINTH CIRCUIT MODEL JURY INSTRUCTION 1.2**

*Given* \_\_\_\_

*Rejected* \_\_\_\_

*Given, As Modified* \_\_\_\_

DEF'S PROPOSED JURY INSTRUCTIONS

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**DEFENSE PROPOSED INSTRUCTION NO. 4****Presumption of Innocence/Reasonable Doubt**

You are instructed that you must presume Mr. Rocha/Núñez to be innocent of the crimes charged. Thus Mr. Rocha/Nunez, although accused of a crime in the indictment, begins the trial with a “clean slate”-with no evidence against him. The indictment, as you already know, is not evidence of any kind. Mr. Rocha/Núñez is not on trial for any act or crime not contained in the indictment. The law permits nothing but legal evidence presented before the jury in court to be considered in support of any charge against Mr. Rocha/Núñez. The presumption of innocence alone, therefore, is sufficient for you to find Mr. Rocha/Núñez not guilty.

The burden is always on the government to prove guilt beyond a reasonable doubt. The burden never shifts to Mr. Rocha/Núñez, for the law never imposes upon the Defendant in a criminal case the burden or duty of calling any witnesses, producing any evidence, or taking the stand to testify. Mr. Rocha/Núñez is not even obligated to produce any evidence by cross-examining the witness for the government.

It is required that the government prove guilt beyond a reasonable doubt. A reasonable doubt is doubt based upon reason and common sense-the kind of doubt that would make a reasonable person hesitate to act. It may arise from a careful and impartial consideration of all the evidence, or from lack of evidence. Proof beyond a reasonable doubt is proof that leaves you firmly convinced Mr. Rocha/Núñez is guilty.

Unless the government proves, beyond a reasonable doubt, that Mr. Rocha/Núñez has committed each and every element of the offense charged in the indictment, you must find Mr. Rocha/Núñez not guilty of the offense. If the jury views the evidence in the case as permitting either of two conclusions-one of innocence, and the other guilty-the jury must, of course adopt the conclusion of innocence.

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1 The Ninth Circuit has expressly approved a reasonable doubt instruction that informs the  
2 jury that the jury must be “firmly convinced” of the defendant’s guilt. *United States v.*  
3 *Velasquez*, 980 F.2d 1275, 1278 (9th Cir. 1992); *Victor v. Nebraska*, 511 U.S. 1, 5 (1994); *see*  
4 *also Lisenbee v. Henry*, 166 F.3d 997, 999 (9th Cir. 1999).

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6 NINTH CIRCUIT MODEL JURY INSTRUCTION 3.5 (2010).  
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25 *Rejected* \_\_\_\_

26 *Given, As Modified* \_\_\_\_

27 DEF’S PROPOSED JURY INSTRUCTIONS

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**DEFENSE PROPOSED INSTRUCTION NO. 5**

**Credibility of Witnesses**

In deciding the facts in this case, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, or part of it, or none of it.

In considering the testimony of any witness, you may take into account:

- (1) the witness's opportunity and ability to see or hear or know the things testified to;
- (2) the witness's memory;
- (3) the witness's manner while testifying;
- (4) the witness's interest in the outcome of the case, if any;
- (5) the witness's bias or prejudice, if any;
- (6) whether other evidence contradicted the witness's testimony;
- (7) the reasonableness of the witness's testimony in light of all the evidence; and
- (8) any other factors that bear on believability.

You must avoid bias, conscious or unconscious, based on the witness's race, color, religious beliefs, national origin, sexual orientation, gender identity, or gender in your determination of credibility.

The weight of the evidence as to a fact does not necessarily depend on the number of witnesses who testify about it.

NINTH CIRCUIT MODEL JURY INSTRUCTION 1.7 (modified)

*Given* \_\_\_\_

*Rejected* \_\_\_\_

*Given, As Modified* \_\_\_\_

DEF'S PROPOSED JURY INSTRUCTIONS

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1 **DEFENSE PROPOSED INSTRUCTION NO. 6**

2 **Defendant's Testimony**

3 The defendant has testified. You should treat his testimony just as you would the  
4 testimony of any other witness. You should not disregard or disbelieve his testimony simply  
5 because he is charged as a defendant in this case.

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7 NINTH CIRCUIT MODEL JURY INSTRUCTION 3.4 (2010)(modified)

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25 *Rejected* \_\_\_\_

26 *Given, As Modified* \_\_\_\_

27 DEF'S PROPOSED JURY INSTRUCTIONS

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1 **DEFENSE PROPOSED INSTRUCTION NO. 7**

2 **Defendant's Choice Not to Testify or Present Evidence**

3 The defendant did not testify (or present evidence) in this case. In a criminal case, a  
 4 defendant has a constitutional right not to testify or to present any evidence. The burden of proof  
 5 remains with the government throughout the entire trial and never shifts to the defendant. The  
 6 defendant is never required to prove that he is innocent. You must not attach any significance to the  
 7 fact that the defendant did not testify. You must not draw any adverse inference against him because  
 8 he did not take the witness stand. Do not consider, for any reason at all, the fact that he did not  
 9 testify. Do not discuss that fact during your deliberations or let it influence your decision in any way.  
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 12 NINTH CIRCUIT MODEL JURY INSTRUCTION 3.3 (2010) (Modified); *United States v.*  
 13 *Castaneda*, 94 F.3d 592, 596 (9th Cir. 1996); *Carter v. Kentucky*, 450 U.S. 288 (1981); *Shults v.*  
*Whitley*, 982 F.2d 361 (9th Cir. 1992);

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27 *Given, As Modified* \_\_\_\_

28 DEF'S PROPOSED JURY INSTRUCTIONS

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**DEFENSE PROPOSED INSTRUCTION NO. 8****Duty Of Jury** (to be given during closing instructions)

I want to remind you about your duties as jurors. When you deliberate, it will be your duty to weigh and to evaluate all the evidence received in the case and, in that process, to decide the facts. To the facts as you find them, you will apply the law as I give it to you, whether you agree with the law or not. You must decide the case solely on the evidence and the law before you and must not be influenced by any personal likes or dislikes, opinions, prejudices, sympathy, or biases, including unconscious bias. Unconscious biases are stereotypes, attitudes, or preferences that people may consciously reject but may be expressed without conscious awareness, control, or intention. Like conscious bias, unconscious bias, too, can affect how we evaluate information and make decision.

NINTH CIRCUIT MODEL JURY INSTRUCTION 1.1 (2010) (Modified)

*Given* \_\_\_\_*Rejected* \_\_\_\_*Given, As Modified* \_\_\_\_

DEF'S PROPOSED JURY INSTRUCTIONS

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